ARUL CHANDRAN v. TARA RAJARATNAM

[O.C.J. (Syed Othman J.) April 17, 1978]
[Johor Bahru — Originating Motion No. 46 of 1977]

Land Law — Caveat — Application to remove caveat — National Land Code, s. 326.

The applicant in this case sought to remove a private caveat lodged by the respondent in respect of 70 pieces of land in Johor. The applicant became the registered proprietor of the said land by a transfer on October 10, 1975. In an earlier action, the respondent was ordered by the court on August 9, 1977 to deliver up possession of the said land. The respondent's application for stay was refused.

The respondent contended that she was the lawful equitable owner of the land. She claimed that on March 30, 1974 at the request of her husband and her brother-in-law she agreed to charge the land to one *P.S.* to obtain a loan of $220,000. The respondent claimed that *P.S.* had agreed that he would not sell the land within one year of the transfer of the land to his name and that her consent was necessary in the event of sale by *P.S.* She contended that *P.S.* in violation of the agreement had after having the land registered in his name on July 21, 1975 purported to sell and transfer the land to the applicant on August 9, 1975. The respondent claimed that the said transfer was invalid and inoperative in law and that she had a caveatable interest in the land.

Held: (1) the extinction of a caveat is final and irrevocable. In the present case, the removal by the Collector of the caveat had the effect of extinguishing it;

(2) under section 326(2) the power to extend the life of the caveat lies with the court. The action of the respondent in lodging another caveat on the same land and based on the same ground after expiry of the first one, was in effect usurpation of the powers of the court.

Cases referred to:-

(1) *Damodaran* v. *Vasudeva* [1974] 1 M.L.J. 128, 129.

(2) *K.I. Muhiuddeen Rawther* v. *K.E.P. Abdul Kassim* [1959] M.L.J. 257.

ORIGINATING MOTION.

Dato P. Suppiah for the applicant.

Subramaniam P. Naicker for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The applicant seeks the removal of a private caveat entered by the respondent on the register document of title in respect of 70 pieces of land held under Q.T. 20382 to 20451 in the Mukim of Senai, Kulai, Johor.

The affidavit supporting the application may be stated briefly. On October 10, 1975, by a transfer the applicant became the registered proprietor of the land held under Certificate of Title No. 13817 Mukim of Senai, Kulai. In a Johor Bahru Court action, the court on August 9, 1977 ordered the respondent to deliver up possession of the land. Her application for stay was refused. The applicant then surrendered the land to the State Authority for sub-division. The State Authority after sub-division issued 70 new titles to the applicant. The lands are now being developed into a housing estate; buildings are being constructed thereon. More than 2 acres have been surrendered, if I am not mistaken, for the purposes of providing roads and other open spaces in the housing estate.

One of the exhibits attached to the affidavit is a statutory declaration by the respondent filed when she applied for entry of the caveat. By the statutory declaration she claims that she is the lawful equitable owner of the land; that on March 30, 1974, at the request of her husband and brother-in-law, Dr. Das, she entered into a written agreement with Dato P. Suppiah, an advocate & solicitor here, charging the said property to obtain a loan of $220,000; it was agreed that Dato Suppiah would not sell the land within one year of the transfer of the land to his name and that her consent was necessary in the event of sale by Dato Suppiah, and that Dato Suppiah in violation of the agreement, after having the land registered in his name on July 21, 1975, purported to sell and transfer the land to the applicant on August 9, 1975; she believes that the transfer to the applicant is bad, invalid and inoperative in law.

In reply to the application to remove the caveat, the respondent has filed a rather lengthy affidavit, which consists mainly of arguments, law and advice by solicitors. I must remind the solicitors who prepared the affidavit that in such an affidavit the court is merely concerned with facts, which would show or tend to show that the respondent has the right to maintain the caveat. The affidavit may be put briefly thus: she asserts that the transfer to the applicant was bad in law, and the order granted by the court to Dato Suppiah was possession and not ownership; she believes that the transfer to the applicant and sub-division were effected to defeat her claim to the land. Paragraphs 9 to 12 read as follows:

"9. I humbly say that I have a caveatable interest in the said land in that:—

(a) the alleged or purported sale and transfer of my said land to the applicant's immediate predecessor-in-title, one Datuk P. Suppiah was procured or brought about by misrepresentation or fraud and hence liable to be defeated or set aside in my favour;

(b) the applicant, who purportedly acquired the said land from the said Datuk P. Suppiah, is not a purchaser in good faith for valuable consideration and without notice under the National Land Code, and whose title is therefore liable to be defeated or set aside in my favour.

10. Datuk P. Suppiah's rights and title to the said land purportedly arose out of a written memorandum and an indorsement thereto executed respectively by me and the said Datuk P. Suppiah (A copy of the said memorandum with the said indorsement is exhibited herewith and marked 'TR 2').

11. I was induced and persuaded to agree to the transfer of my said land to Datuk P. Suppiah on the strength and for reasons of the various representations expressed, apparent or implied in the said memorandum and the indorsement thereto.

12. The expressed representations, to the best of my understanding are:—

(a) that the total consideration for the land is $220,000;

(b) that out of the said $220,000 a sum of $110,000 will be paid to me and/or to my account, and that out of the said sum of $110,000 a certain amount will be for the discharge of my land from the Kulai Chung Khiaw Bank and the balance paid to me;

(c) that as to the remaining $110,000 the same to be paid to or to the account of one Datuk Jaginder Singh by way of settling and discharging a debt of that amount owing to the said Datuk Jaginder Singh from my brother-in-law, one Dr. K. S. Das.

(d) that I would be given one year to repay the sum of $220,000 and to have the property retransferred into my name."

The consideration of transfer as shown in one of the exhibits to the affidavit reads as follows:

"I, Tara Rajaratnam (f) NRIC. No. 2317344 of No. 76, Main Road, Kulai, Johore, proprietor of the land described in the Schedule below and the house erected thereon and known as KLBSK 681, Kulai Besar, Kulai, Johore, hereby

confirm that the consideration of $220,000 referred to in the Transfer executed by me in respect of the said land in favour of Pakiasamy Suppiah of No. 33, Jalan Keruing, Kebun Teh Park, Johore Bahru is arrived at as follows:—

(a) in consideration of the said P. Suppiah paying the sum of Dollars $103,658.44 which is the amount due from me to the Chung Khiaw Bank Kulai Branch, as at March 8, 1974 as stated in their letter dated March 14, 1974 which is attached herewith and marked 'A' on the Charges executed by me in their favour and a further sum of $6,341.56 (making in all $110,000) part of which is for additional interest payable to the said Bank as from March 9, 1974 to the date of Transfer and the balance is to be received by me.

(b) further sum of $110,000 is in consideration of the said P. Suppiah paying Datuk Jagindar Singh of No. 41, Jalan Waspada, Johore Bahru, being the amount payable by my brother-in-law Dr. Krishna Shivadas (also known as Dr. Das) of No. 25, Jalan Waspada, Johore Bahru, to the said Datuk Jagindar Singh who will be paying to the Hongkong & Shanghai Bank, Collyer Quay, Singapore, the sum of $110,000 (which I hereby agree) being the loan granted to my said brother-in-law by the said Datuk Jagindar Singh.

The Schedule referred to above.

Mukim	*Lot No.*	*Description and No. of Title*	*Share of Land (if any)*	*Registered No. of lease/ sub-lease (if any)*	*Registered No. of Charge (if any)*
Senai Kulai	6025	Certificate of Title No. 13817 for area 5 acres 0 r. 00 p. or thereabouts	Whole	Nil	Nil

Dated this 30th day of March, 1974.

Signed K.V. DEVAN
Witnessed by

Signed by the abovenamed
TARA RAJARATNAM

I, the above named Pakrisamy Suppiah hereby confirm, agree, and undertake not to sell the said land and house to anyone for one year without the consent of the said Tara Rajaratnam (f) and further undertake to transfer the said land and house to her within one year in the event of her paying me the sum of $220,000 (Dollars two hundred and twenty thousand only) the consideration mentioned as above.

Witnessed by
Sgd. C. SIVANATHAN Sgd. P. SUPPIAH"

The affidavit further says that the transfer to the applicant was not a *bona fide* purchase as he is an advocate and solicitor in Singapore and a close friend of Dato P. Suppiah and Dato Jaginder Singh.

I find that the respondent in the statutory declaration attached to her application for entry of the caveat has not quite correct in construing the transfer document. In the statutory declaration she states:

"... I entered into a written agreement with one P. Suppiah, charging the said property by way of security in order to obtain a loan of $220,000.

3. It was agreed that the said P. Suppiah would not sell the said property within one year of the transfer of the same into his name. It was further agreed that my consent was necessary in the event of a sale by the said P. Suppiah."

The construction of the transfer document indicates that performance must have been completed by Dato Suppiah as the material parts in paragraphs (a) and (b) in the consideration of sale read "... in consideration of ... P. Suppiah paying...". As regards what is said by the respondent to be an agreement not to sell the land, as far as I can see, the appended note at the bottom shown above was a mere undertaking, and does not have the effect of a binding agreement giving the right of redemption within the stated one year, as stated by the respondent. In any case, it was clearly to be operative for one year from the date of transfer document i.e. March 30, 1974 and not from the date of registration of transfer, as stated by the respondent.

I also cannot see that there is anything in the memorandum of transfer which suggests that there was fraud or misrepresentation by Dato P. Suppiah as alleged. The indications from the respondent's own affidavit are that she entered into the transaction at the instance of the husband and the brother-in-law. Her quarrel or dissatisfaction seems to me to be with either of them or both. They must have been present when she entered into the transaction. Further in the court action against her for delivery of possession of the land, this ground was not raised at all. Neither was it mentioned in the application for stay of execution. I remember distinctly that she stated in her application that she was willing and had all the intentions to repurchase the land but did not have the $220,000 to pay Dato Suppiah. This statement cancels any suggestion of fraud or misrepresentation. Coming at this late stage, I have a strong feeling that the ground is being built up. From the respondent's affidavit the allegation appears to relate to events after the transaction and not at the time of transaction.

The contention by the respondent that the order of the court was merely for possession and not ownership is, I would say, is an idle play on words. The action was to recover possession from the respondent, as she was still occupying the land after having sold the land. The court's order was to enable the purchaser to enjoy his full rights as owner.

The respondent claims that the transfer of the land by Dato Suppiah to the applicant was in effect bogus. The reasons given are that Dato Jaginder Singh, Dato Suppiah and the applicant are friends and always seen together. It is not shown how the respondent knows that the three are always in each other's company. I cannot imagine that the respondent can be tracking their movements and can be around when the three are together, as the respondent is a housewife. In any case, I cannot accept that simply because a person sells his property to a friend under the circumstances, the transaction is bogus. In the absence of cogent evidence, I would presume that the applicant was a *bona fide* purchaser for value.

The applicant's side contends in effect that by reason of the surrender to the State Authority of the whole land which had been held under the certificate of title, and then realienation by the State Authority of the portions of the land under 70 separate titles, the land has lost its original character and the new titles in effect are freed and discharged from all other claims, titles and interest. Reference is made to section 131(a) of the National Land Code which provides to the effect that land forfeited under the Act and reverted to the State Authority shall be freed and discharged from all titles and interests subsisting and capable of arising immediately before the forfeiture

took effect. By section 199(1) the provisions of section 131 shall apply to surrendered land. My view is that the provisions are intended to apply to the State Authority and not to the holder of the land as against any person claiming title or interest in the land. I am also inclined to think that in whatever clothing a title of land may be, if it is identifiable to be the land affected by a claim to title or interest, then a caveat can be entered. The surrender to the State Authority, in the circumstances of this case, was merely for the purpose of sub-division and the issue of separate titles for the sub-divided portions of the land to enable the owner to dispose of them separately. Title numbers are merely brands given to the land. They do not change the material i.e. the land. They do not affect a claimant's rights.

I come to the most significant point that has been raised. It is shown by the applicant that when the land was held under certificate of title, the respondent caveated it on June 15, 1976; on June 30, 1976 at the instance of the applicant, the Collector issued a notice in Form 19C of intended removal of the caveat at the expiry of a month from service of the notice. The respondent did nothing and the Collector after the expiry of a month removed the caveat.

In dealing with this point, I need only advert to the judgment of Syed Agil Barakbah J. in *Damodaran v. Vasudeva*[1] where at page 129 he discussed several authorities. He referred to *K.I. Muhiuddeen Rawther v. K.E.P. Abdul Kassim*[2] where Ong J. (as he then was) said that the extinction of a caveat is final and irrevocable. It seems to be established law that the court has no power to remove, renew or extend a caveat after its lapse. I should add if it is based on the same claim. Under section 326(2) of the National Land Code the power to extend the life of the caveat lies with the court. The respondent ignored the Collector's notice to remove the caveat. She did not apply to the court for extension. Applying the above principle, the removal by the Collector has the effect of extinguishing the caveat. In my view, the action of the respondent in lodging another caveat, based on the same claim after the Collector had removed the first caveat and without seeking the court's order, was tantamount not only to spurning the Collector's act done according to law, but also to usurping the powers of the court. Considering this act of the respondent and then her non-disclosure to the court that the first caveat had been removed, I do not think she has any ground, equitable or legal, to maintain the caveat. Further, the land, by reason of her own act in having transferred it, has lost its original user, as it is being developed into a housing estate. The applicant must have expended substantial sums for the development. Regard must be had to this and to public interest as well. But in spite of all this, I would not say that the respondent is without remedy. If she could establish her claim, damages should be appropriate remedy in the circumstances of the case.

I hereby order that the caveat be removed. Costs to the applicant.

Order accordingly.

Solicitors: *Suppiah & Singh; Subra Naicker & Co.*

PUBLIC PROSECUTOR v. OH KENG SENG

[O.C.J. (Ajaib Singh J.) October 18, 1978]
[Seremban — Criminal Trial No. 2 of 1976]

Sedition — Freedom of speech — Limitations imposed by law — Intention of accused irrelevant — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

Criminal Law & Procedure — Charge of sedition — Charge lacking in particulars — Charge did not specify particular category of seditious tendency — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

The accused in this case was charged as follows:—

"That you on the 23rd day of June, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act, 1948 (Revised 1969), and punishable under section 4(1) of the said Act."

The trial judge found the said charge defective and highly prejudicial to the accused as it did not specify the particular category of seditious tendency as defined in section 3(1) of the Sedition Act, 1948.

The trial court amended the charge to read as follows: "That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) that is to say, words having a seditious tendency as defined in section 3(1)(a) and 3(1)(e) of the Sedition Act 1948 (Revised 1969) namely, to bring into hatred, contempt and to excite disaffection against the Government and to promote feelings of ill-will and hostility between different races of the population, and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

The accused did not seriously deny that he had made the speech which was the subject-matter of the charge. He contended, however, that his speech was a fair criticism of government policies, that he had no intention of causing any racial trouble and that he never advocated to the people that they should take the law into their own hands.

Held: (1) *bona fide* and fair criticism of government policies and of opposition political parties is not within the mischief of the Sedition Act so long as the speaker does not exceed the bounds allowed to him under the law;

(2) the intention of the accused when he made the speech and used words which are alleged to be seditious is not material or relevant for it is provided in section 3(3) of the Sedition Act that the intention of the speaker shall be deemed to be irrelevant if in fact the words have a seditious tendency;

(3) to establish its case against the accused the prosecution is not obliged to prove that anything said in his speech was true or false or that it caused any disturbance or a breach of the peace;

(4) the accused in this case had not succeeded in establishing even on a balance of probabilities that the speech delivered by the accused came within any of the permissible limits as set out in section (2) of the Sedition Act.

Case referred to:-

(1) *Yoh Meng Heng* v. *Public Prosecutor* [1970] 1 M.L.J. 14.

CRIMINAL TRIAL.

Razalli bin Hassan (Deputy Public Prosecutor) for the prosecution.

Yeap Ghim Guan (*John Fernandez* with him) for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused was charged as follows: —